U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10185224

Date: APR. 19, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an entrepreneur, seeks second preference immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not qualify for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, and that he had not had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief asserting that he is eligible for classification as a member of the professions holding an advanced degree and for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[2], grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

[2] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[3]

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

In order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by "[a]n official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, a petitioner may present "[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(i)(B).

The Petitioner presented a certificate stating that he completed an undergraduate course of Business Management Technology (July 2006 - August 2008) at University of [redacted] in Brazil. In addition, the Petitioner provided a certificate indicating that he "completed the Graduation Course 'lato sensu,' in the level of specialization MBA - Master of Business Administration, Business Strategy"

[3] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

(August 2008 - October 2009) at University of [redacted] The record also includes an evaluation from [redacted] stating that the Petitioner's academics and professional experience are the equivalent of a "Master of Business Administration" degree.

The Petitioner has not established that either of his Brazilian certificates alone is the foreign equivalent degree to either a U.S. baccalaureate degree or a U.S. advanced degree.[4] For example, on page one, the evaluator stated that the U.S. degree equivalence was "based upon a combination of Academics and a minimum 5 years Professional experience, as per USCIS." Pages five and six indicated that:

> Considering that a Degree followed by more than five years of full-time work experience in the field of Business Administration is equivalent to a Master of Business Administration, it is my expert opinion that [the Petitioner], with a degree, a Master of Business Administration and 10 years of experience, has no less than the equivalent of a Master's Degree in Business Administration.

The regulatory language identifying "a United States baccalaureate degree," "a United States advanced degree," or "a foreign equivalent degree" at 8 C.F.R. § 204.5(k)(2) and 8 C.F.R. § 204.5(k)(3)(i)(A) and (B) requires a single degree rather than a combination of academic credentials. Without evidence demonstrating either of his Brazilian certificates alone is the foreign equivalent degree to either a U.S. baccalaureate degree or a U.S. advanced degree, the Petitioner has not established that he qualifies as a member of the professions holding an advanced degree.

B. Exceptional Ability

In denying the petition, the Director determined that the Petitioner fulfilled only the academic record criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A). The Petitioner's appellate submission does not contest the Director's findings or maintain that he satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii). Without offering any arguments or evidence to overcome the Director's findings, the Petitioner has not established that he satisfies at least three of the criteria and has achieved the level of expertise required for exceptional ability classification.

C. National Interest Waiver

The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

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[4] We note that the Petitioner has presented academic records reflecting only three years and three months of postsecondary education. In order to have education and experience equating to an advanced degree under section 203(b)(2) of the Act, the Petitioner must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree (plus five years of progressive experience in the specialty). *See* 8 C.F.R. § 204.5(k)(2). A United States baccalaureate degree is generally found to require four years of education. *See Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977). There is no provision in the statute or the regulations that would allow a petitioner to qualify under section 203(b)(2) of the Act as a member of the professions holding an advanced degree with anything less than a full baccalaureate degree (plus five years of progressive experience in the specialty).

Regarding his claim of eligibility under *Dhanasar*'s first prong, the Petitioner stated that he intends to continue his "career in the United states as an entrepreneur, specifically by serving the high-growth industries of construction and transportation." He asserted that his proposed endeavor involves providing "business services to U.S. companies, institutions, and individuals in need of expert advice in business management, marketing strategies, business solutions, business development, and innovation development." The Petitioner further indicated that he plans "to invest in [redacted], a long-distance freight trucking company based in Florida, to increase its truck fleet and, consequently its revenue potential, besides prospecting new American and foreign clients that can use its services." He also explained that he plans "to enter into partnership with [redacted] a company which specializes in building high-end homes in [redacted] Florida, together with other Brazilian investors."

The record includes information about immigrant entrepreneurs' economic contributions, the value of entrepreneurs to the global economy, U.S. immigration policy, foreign-owned companies' impact on U.S. employment, the economic legacy of immigrants and their children, and our country's long-range freight outlook. In addition, the Petitioner provided articles discussing the value of entrepreneurs to our country's economy, immigration's impact on our nation's economic growth, immigrant-founded billion-dollar startups, the long-distance freight trucking industry, the U.S. real estate industry, and immigrants' contribution to our nation's economic growth. He also submitted information about foreign-born entrepreneurs' effect on our country's economy, the economic and fiscal consequences of immigration, foreign direct investment (FDI) in the United States, the impact of FDI on the U.S. economy, commercial real estate's effect on our nation's economy, and entrepreneurs' involvement in promoting a more inclusive economy. The record therefore shows that the Petitioner's proposed work as an entrepreneur involved in construction and long-distance freight trucking has substantial merit.

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

In his appeal brief, the Petitioner asserts that his proposed endeavor stands to "stimulate the economy, providing direct and indirect jobs, locally and nationally." He contends that through "undertaking real estate development projects" and "promoting business," he "will directly serve nationwide concerns, such as the current shortage of housing offer [*sic*]." The Petitioner further argues that his proposed work "will produce substantially positive economic opportunities for the nation, due to the ripple effects of his professional activities." Additionally, he states that his endeavor will benefit our country through helping "increase the flow of money in the U.S. on a national level, thus contributing to U.S. gross domestic product (GDP)."

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his work. Although the Petitioner's statements reflect his intention to provide business services and investment funding for two Florida-based companies, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar* we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we conclude the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his two companies to impact his field or the construction and long-distance freight trucking industries more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, he has not shown that his investment plans and companies' future staffing levels stand to provide substantial economic benefits in Florida or the United States. While the Petitioner asserts that [redacted] will hire six U.S. employees, he has not offered sufficient evidence that the area where the company operates is economically depressed, that he would employ a significant population of workers in that area, or that his endeavor would offer the region or its population a substantial economic benefit through employment levels or business activity. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the regional or national economy resulting from the Petitioner's projects would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

The Petitioner has not established that he satisfies the regulatory requirements for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. Furthermore, as the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.